

Decision **DRAFT DECISION OF ALJ BUSHEY** (Mailed 1/12/2006)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Evaluate Existing  
Practices and Policies for Processing General Rate  
Cases and to Revise the General Rate Case Plan  
for Class A Water Companies.

Rulemaking 03-09-005  
(Filed September 4, 2003)

**FINAL DECISION ON THE RATE CASE PLAN**

**Summary**

This decision adopts a process for seeking waivers of the water Rate Case Plan (RCP) requirements, modifies the filing requirements in one respect, and closes the proceeding.

**Background**

In Decision (D.) 04-06-018, we adopted a revised RCP that required Class A water utilities (i.e., those with more than 10,000 service connections) to submit general rate case (GRC) applications on a three-year cycle pursuant to § 455.2.<sup>1</sup> We adopted two major process changes to ensure that rate cases were completed on time, in order to adhere to the cycle. We also set over several issues for further consideration by the parties in Phase II.

In March 2005, the Water Division filed its workshop report on the Phase II issues. The report is summarized in Attachment A. In general, the workshop

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<sup>1</sup> All citations are to the Public Utilities Code unless otherwise indicated.

report concluded that the parties had resolved some issues informally, e.g., summary of earnings tables, or had determined that the issue was best handled in each utility's GRC, e.g., use of "dummy" variables in sales forecasts. No further action was required by the Commission on any issue.

Besides the Phase II activity, on December 15, 2005, the Commission issued D.05-12-048, which addressed the application for rehearing of the Commission resolution granting Great Oaks Water Company authority to file its GRC by advice letter rather than application. That decision ordered that procedures be adopted for seeking waivers from RCP requirements, including using the advice letter process rather than GRC application. In today's decision, we adopt the advice letter process as the vehicle for requesting waivers.

We also repeal the RCP requirement that testimony supporting the proposed and final applications be filed, as well as served on all parties. Our general practice, outside the RCP, is that testimony is served but not filed. The RCP is inconsistent with this practice and should be changed.

## **Discussion**

The RCP requirements do not and cannot anticipate all possible circumstances. Utilities should have a clearly stated means to seek waiver of requirements that are inappropriate or inefficient. The advice letter process is the most expeditious procedural means that will allow all other stakeholders an opportunity to comment on the proposed waiver of a RCP requirement, and is the procedure we selected in D.04-06-018 for seeking waivers of GRC filing requirements as provided in § 455.2(c). Therefore, any utility seeking waiver of any RCP requirement should file an advice letter, consistent with General Order 96-A, or its successor, and serve all parties to this docket in addition to any other required parties.

Our general practice is to include testimony in the record only after it has been offered as an exhibit during hearings. Testimony distributed prior to hearing is subject to modification, and the record could become unclear should two inconsistent versions be included in the record. Therefore, we will conform the RCP to our general practice and repeal the requirement for filing testimony with the proposed or final application. Such testimony, however, must be served on all parties.

### **Comments on Draft Decision**

The draft decision of ALJ Maribeth Bushey in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Commission's Rules of Practice and Procedure.

The Division of Ratepayer Advocates (DRA), formerly known as the Office of Ratepayer Advocates, filed comments and contended that prior to taking the actions set forth in the draft decision, the Commission must reopen the record and take comment from the parties. DRA also recommended that the Commission adopt the Water Division workshop report<sup>2</sup> and implement the changes on the following topics: calculating second escalation year rate base, depreciation, and ad valorem taxes; using dummy variables in sales forecasting; streamlining cost of capital; and calculating weighted average rate base for July filers.

San Gabriel Valley Water Company (San Gabriel) supported the draft decision's proposal to serve but not file testimony with both the proposed and

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<sup>2</sup> DRA also noted that the Workshop Report and comments were not formally filed. To correct this, we have placed the report and comments in the correspondence section of the formal file.

final application. San Gabriel went further and pointed out that the filing requirements for the application are unnecessarily burdensome – requiring an original and seven copies of both the proposed and final application. San Gabriel also requested that the obligation of a utility to provide copies of a proposed application upon request should be lifted. San Gabriel stated that this obligation has led to intervenors relying on superseded documents from the proposed application in the ensuing proceeding. San Gabriel argued that the draft decision erred in adopting the rate base escalation process set out in footnote 6 of the RCP decision, which retained the “current system of two test years and one attrition year,” because not all utilities, including San Gabriel, historically used that process.

DRA filed reply comments opposing San Gabriel’s proposals, and argued that the Commission must reopen the record to consider these proposals.

The California-American Water Company (Cal Am) filed reply comments disputing DRA’s legal analysis. Cal Am stated that the California Constitution, Public Utilities Code, and the Commission’s Rules of Practice and Procedure grant the Commission full authority to adopt the advice letter process as the mean to request waivers of “inappropriate or inefficient” requirements of the RCP. Cal Am pointed to the plain language of § 455.2 as allowing the Commission to waive the formal general rate case filing requirement completely, and concluded that such authority necessarily encompasses the ability to waive “superfluous and inapplicable procedures under the RCP.” Cal Am opposed adopting the rate base escalation year methodology in footnote 6, as well as any prohibition on the use of dummy variables, and limiting review of the cost of capital to every three years.

Park Water Company (Park) and the California Water Association (CWA) filed reply comments echoing San Gabriel's and Cal Am's opposition to DRA's recommendations. Park and CWA also supported San Gabriel's position on rate base escalation years.

We are not persuaded that this Commission lacks the power to adopt a procedural mechanism that allows a utility to place before the Commission novel factual or legal circumstances which, the utility contends, render "inappropriate or inefficient" certain components of the RCP, and to seek a waiver of such a provision. As Park noted, a request in no way guarantees approval. All parties will receive notice and be afforded the opportunity to comment on the request. Similarly, the Commission has sufficient authority to alter the number of copies to be filed and to exclude testimony after comment pursuant to § 311(g)(1).

We deny San Gabriel's request to lift the requirement to provide a copy of the proposed application to interested parties upon request. The potential for confusion can be diminished with appropriate markings, i.e., "draft", and by providing requesting parties with the updated, final version.

Finally, as CWA observed, the comments demonstrate that a dispute exists with regard to escalation year rate base and we will take no further action on this topic at this time.

Attachment B sets forth the adopted changes to the RCP in "underline" format, only modified sections are included. The changes include requiring that testimony supporting the proposed and final applications be served but not filed, and limiting to one the number of proposed application copies to be filed.

In conclusion, we emphasize the importance of each utility submitting a complete application that addresses all information requirements. Cross-references to testimony are not sufficient. A meaningful summary of the

facts must be included in the application, with cross-references to specific portions of testimony for supporting detail.

**Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

**Findings of Fact**

1. The Commission staff held workshops on the issues set over to Phase II of this proceeding, and submitted a report which is summarized in Attachment A.
2. Testimony supporting the proposed or final application need not be filed, but only served. Testimony is filed when it is received into evidence.

**Conclusions of Law**

1. Utilities should request waivers of RCP requirements by advice letter.
2. The modifications to the filing requirements of the RCP, as set forth in Attachment B, should be adopted.

**FINAL ORDER**

**IT IS ORDERED** that:

1. Class A Water Utilities that wish to obtain a waiver of any requirement of the Rate Case Plan shall do so by filing an advice letter as provided in General Order 96-A, or its successor. In addition to any other service requirements, such advice letters shall be served on all parties to this proceeding.

2. Testimony supporting proposed or final applications shall be served but not filed with the Commission as set forth in Attachment B to today's decision.

3. Rulemaking 03-09-005 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**ATTACHMENT A**  
**Summary of March 2005 Workshop Report**

Issue	Resolution
Standardizing summary of earnings tables	Water Division to work with individual utilities.
Second escalation year rate base, depreciation, and ad valorem taxes	No consensus.
Excluding depreciation from lead/lag study	Ratemaking issue for each utility to justify approach in rate case
Dummy variables in sales forecasting	Ratemaking issue for each utility to justify approach in rate case
Sales/revenue adjustment mechanism	Should be dealt with in individual rate cases
Water quality standards	Separate OIR
Streamline cost of capital	No consensus
Calculating weighted average rate base for July filers	Use calendar year capital budgets
Procedures for adopting interim rates	Utilities oppose rules adopted in D.04-06-018

**(END OF ATTACHMENT A)**



**ATTACHMENT B**  
**Revisions to Rate Case Plan (Appendix to D.04-06-018)**

IV. Detailed Schedule

1. Proposed Application (PA) Filed

B. Number of Copies of PA

The original signed copy of the PA shall be tendered to the Commission's Docket Office. Prepared testimony supporting the PA shall be served but not filed. In addition, four copies to ORA for single district filings, five copies for multi-district filings, and a copy to the Commission's Legal Division. All ORA and Legal copies shall include a full set of workpapers, and supporting testimony.

Applicant shall furnish copies of the PA and workpapers to interested parties on written request.

C. Required Content of PA and Supporting Prepared Testimony

**Any Other Information Necessary to Meet Utility's Burden of Proof**

The utility bears the burden of proving that its proposed rate increase is justified and must include in the PA, and supporting testimony, all information and analysis necessary to meet this burden.

5. Application Filed

Day 0 (All Applications)

No later than 60 days after the PA is filed and ORA has notified the Docket Office that the PA has been accepted, the utility may file its complete GRC application. An original and six copies of the application shall be filed with the Docket Office. Final supporting testimony shall not be filed but shall be served on all parties including the assigned ALJ or, if none is yet assigned, the Chief ALJ. All data included in the PA shall be updated to include information that was not available when the PA was filed, and all such changes shall be quantified and explained in a comparison exhibit. The application shall conform to the content of the PA, as approved by ORA, and shall include all final versions of the exhibits provided in the PA. The utility shall serve copies of the application as provided above for the PA.

**(END OF ATTACHMENT B)**